

# Staff Summary Report



To: Mayor & City Council  
Through: City Manager

Agenda Item Number 17  
Meeting Date 6/7/01

**SUBJECT:** Award of Request For Proposal #01-027 – Modular Newsracks

**PREPARED BY:** Donna Littrell, CPPB, Procurement Officer, 480-350-8516

**REVIEWED BY:** Ron Gauthier, CPPO, Central Services Manager, 480-350-8405

**BRIEF:** Request to award a six-month contract for modular newsracks to City Solutions

**COMMENTS:** **Purchases (1004-01)** Request to award a six-month contract to City Solutions for a pilot program to provide and install modular newsracks at five city locations at an estimated cost of \$15,000.

**DOCUMENT NAME:** (20010607fssl01) Supporting Documents: Yes

**SUMMARY:** **Historical background**

Per Council direction, a Request For Proposal was issued to establish a contract for a six-month pilot program for the supply, media distribution and maintenance of modular newsracks at five locations along Mill Avenue in the downtown Tempe commercial area.

**Evaluation Process**

An evaluation committee composed of City staff reviewed the two proposals received and scored them according to the criteria listed in the Request For Proposal. One vendor, Rak Systems Inc., did not meet the requirements of the proposal. Rak Systems Inc. only manufactures the modular newsracks and does not maintain them. The criteria listed in the proposal include:

- Design
- Proposed program operation
- Previous experience and references
- Relative cost to the City
- Quality (construction) of newsracks

The remaining vendor, City Solutions, received a score of 93 points in the evaluation. City Solutions has a good design and proposed program operation, has excellent references and good experience, offered a competitive cost to the City (\$500 per panel for a 28 day period), and has good metal fabrication used in the construction of the newsracks. The committee was provided a video of the newsrack program currently in use by the City of Indianapolis. The committee also contacted the City Attorney for the City of Indianapolis for input

on the success of the program. After the evaluation process, the recommendation of the committee was brought before the Sidewalk Vending Committee for their consideration. The Sidewalk Vending Committee approved the recommendation with the following conditions:

1. No illumination of the units.
2. City purchase advertising rights but display no advertising; or advertise only public service information (note: this would require an amendment to the sign ordinance to allow for any advertising).
3. Color to be selected by the City Design Review staff.
4. Specific locations to be determined in consultation with the Sidewalk Vending Committee and the City Transportation staff.
5. No more or less than five units for the six-month contract.

**FISCAL NOTE:** Funding for this contract will be provided through a General Fund contingency transfer.

**RECOMMENDATION:** It is recommended that the City Council award a six-month contract to City Solutions for the supply, media distribution and maintenance of five modular newsracks in the Tempe downtown commercial area for an estimated cost of \$15,000, subject to the conditions listed by the Sidewalk Vending Committee.

Approved by:  
Donna Littrell  
Procurement Officer

Mark Vinson  
City Architect

Phyllis Ortiz  
Specialty Licenses  
Coordinator

Marlene Pontrelli  
Deputy City Attorney

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

David J. Bodney  
602.257.5212  
dbodney@steptoe.com

Two Renaissance Square  
40 North Central Avenue  
24th Floor  
Phoenix, Arizona 85004-4453

Telephone 602.257.5200  
Facsimile 602.257.5299  
www.steptoel.com

March 27, 2001

VIA HAND-DELIVERY

Mark Vinson  
Chairman  
Downtown Vending Committee  
City of Tempe  
31 East Fifth Street  
Tempe, Arizona 85281

Phoenix Newspapers, Inc. / Modular Newsracks

Dear Mr. Vinson:

Thanks so much to you and your Committee for taking time on March 14 to meet with representatives of *The Arizona Republic* and other local and national newspapers about modular newsracks. As you know, we are very concerned about the City's Request for Proposal to establish a six-month "pilot program for the supply, media distribution and maintenance of modular newsracks at a minimum of five (5) locations along Mill Avenue . . . ." (the "RFP"). We are especially concerned about any "pilot program" that would rely on an out-of-state vendor to service and sell advertising for what in reality could be at least five 18-square-foot billboard units lining the streets of downtown Tempe.

The purpose of this letter is twofold: (1) to identify the risks and flaws inherent in pursuing the RFP's "gangbox" approach; and (2) to offer a viable alternative from the publishing community to address the City's concerns.

1. *The Risks and Flaws in the RFP's Gangbox Approach*

We believe the City's potential reliance on modular newsracks operated by distant entities is fraught with disadvantage to our newspapers, our readers and the City. From both legal and public policy perspectives, it makes no sense to prohibit billboard advertising generally in Tempe, yet allow City Solutions (or some other out-of-state vendor) to hoist a billboard across an 18-square-foot modular rack. Moreover, the RFP's attempt to control the content of such advertisements – by allowing a private contractor to "sell, collect and place tasteful advertising on the outside of the news rack" – may well run afoul of the First Amendment. [RFP, at 18] As

members of this community, we believe such a pilot program would advance neither aesthetic concerns nor the public interest.

Without belaboring all our concerns, we have identified the following specific flaws in the RFP:

- In place of a diversity of newsracks, the RFP would allow a bidder such as “City Solutions” to erect one enormous newsrack – on the back of which (facing Mill Avenue) would stand an 18-square-foot billboard. Under the RFP, there would be *at least* five such billboards in downtown Tempe.
- Such de facto billboard advertising would violate the City’s current code by replacing a variety of newsracks with no less than five huge billboards at street level, facing vehicular traffic in downtown Tempe.
- The RFP’s “Specifications” violate the U.S. and Arizona Constitutions by establishing content-based restrictions on advertising. In particular, the RFP authorizes the awarded contractor to “sell, collect for and place *tasteful advertising* on the outside of the news racks.” [RFP, at 18 (emphasis added)] At the same time, the RFP prohibits any advertising that attacks “the character, integrity, or standing of any organization or individual,” and forbids the display of any “morally reprehensible” advertising, as determined by “the sole opinion of the City.” [*Id.*] See, e.g., *Metromedia, Inc. v. San Diego*, 453 U.S. 490 (1981) (striking down city ordinance forbidding all outdoor advertising display signs except on-premises signs and specific categories of off-premises signs); See also *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993) (affirming an appellate court decision invalidating Cincinnati’s ban of commercial newsracks as not being a “reasonable fit” between the government’s end and its chosen means).
- To the extent the “pilot program” depends on the award contractor to “work with publishers to develop support and distribution of the publications,” the RFP is unworkable. [RFP, at 18] None of the newspapers that participated in the Committee’s March 14 meeting – namely, *The Arizona Republic*, *East Valley Tribune*, *USA Today*, *The Wall Street Journal* and *La Voz* – are willing to have their publications entombed in a modular rack operated by some third party.
- The evidence shows that when out-of-town gangbox operators are responsible for maintaining and operating the racks, problems can ensue. For example:

- i. Just as these operators have less incentive than publishers to ensure that newspapers circulate briskly, they have less incentive than publishers to keep readers satisfied (by ensuring access, supply and, as appropriate, refunds);
  - ii. Because the operator may feel obliged to include *any* publication in the modular rack, reputable newspapers are forced to be displayed alongside disreputable (but nonetheless constitutionally entitled) publications; and
  - iii. Because the encased newspapers have no control over the exterior billboard advertising, they are also forced to share an association with some advertised product or service other than their paper or the news itself.
- Huge modular newsracks are not easily portable. Accordingly, when Tempe holds its annual Fiesta Bowl Parade and other street events, the City would lose its ability to rely on the cooperation of local distributors to remove their racks from the sidewalk for such events. Under the RFP, the City would be establishing a system that lacks the portability of conventional newsracks (and relies instead on large, immovable modular racks, which are ready targets for graffiti).
  - Some local newspapers – like *La Voz* – have recently invested substantial capital in distinctive newsracks. The RFP would render such investments – and the investments of other start-up publications – a nullity.
  - Finally, the evidence shows that when newspapers are placed in modular newsracks, the circulation of newspapers decreases markedly. Circulation decreases when newspapers are held in gangboxes for several reasons: (i) gangboxes deprive newspapers of their brand identity (and consumers therefore cannot recognize their paper(s) of choice); (ii) when consumers cannot find their preferred newspaper(s) (because newsracks bearing distinctive colors, designs and trademarks have been prohibited), “impulse buying” of newspapers decreases; and (iii) when gangboxes fail to function, readers become frustrated and choose not to risk using such devices to get their papers. In an open university atmosphere like Tempe, such a result is anomalous and undesirable under the First Amendment.

In issuing its RFP, the City has expressly reserved the right to “reject any or all proposals . . . .” [RFP, at 3] With that express authority in mind, we encourage you and the

Committee to resist the temptation to regiment the diversity of voices in our community by burying newspapers in giant “condo” racks.

2. *A Viable Alternative from the Publishing Community: A Public-Private Partnership*

Instead of a modular newsrack “pilot program,” we offer the City the viable alternative of working with the newspaper publishing community to address issues of mutual concern in a voluntary public-private partnership. *The Arizona Republic*, working with its colleagues in the newspaper industry – such as *The Business Journal*, *East Valley Tribune*, *La Voz*, *TV Y Mas*, *USA Today*, *The Wall Street Journal* and others – offers this proposal to work together with the City to ensure a safe and aesthetically-enhanced newsrack atmosphere – without compromising the rights of readers to a vibrant and diverse array of voices.

As you know, City Solutions attempted to persuade the City of Phoenix to establish an experimental program using modular newsracks. The City of Phoenix rejected that entreaty. Instead of adopting the gangbox approach, the Downtown Phoenix Partnership, Inc. (“DPP”) has worked with us to address the concerns of the downtown Phoenix community. For example, to the extent businesses in Phoenix expressed concern about fallen newsracks, newspapers littering the streets and the like, we have offered to work with DPP to establish a “rapid response” to meet those concerns.

To that end, we suggest that the City of Tempe establish a “pilot program” to work with the newspaper publishers of this community to meet its concerns about newsracks. We encourage the City of Tempe to consider what the City of Pittsburgh accomplished with its “Good Neighbor” Program. There, a “Newspaper Task Force” created and implemented a voluntary compliance program for the placement and maintenance of newsracks – dubbed the “Good Neighbor” Program. That Program “is designed to ensure that newsracks or news boxes, which are conveniently located on public sidewalks to provide easy access to news and other information to Pittsburgh residents, are maintained in an orderly fashion.” Certainly, we are prepared to work with the City to demonstrate our commitment to the same high safety and aesthetic goals of the Downtown Vending Committee by (a) monitoring the condition and placement of our racks on a regular basis, (b) encouraging publishers whose racks are empty or in disrepair to remove them, and (c) establishing a “rapid response team” for Tempe to ensure a safe and attractive streetscape.

Specifically, we offer to perform the following specific services to address the City’s concerns:

- hire a person to monitor the newsracks in downtown Tempe on a daily basis;
- ensure that no rack is impeding a public right-of-way;

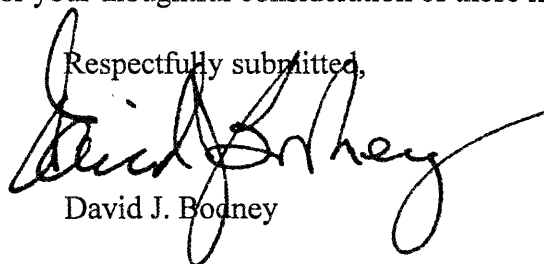
- pick up newspapers from the sidewalk that may have fallen (or otherwise been removed) from newsracks;
- clean the exterior of, and remove any refuse that may have been placed inside, our newsracks;
- straighten racks;
- identify any newsracks that are not in use for lengthy periods and encourage publishers of such papers to remove their racks;
- notify publishers of vandalized racks to ensure prompt replacement;
- make sure newsracks are in working order and perform repairs;
- provide evidence of insurability of newsracks;
- place stickers on member publishers' racks showing the telephone number of our "rapid response team" to address the foregoing concerns.

Finally, we offer to send a representative to meetings of the Committee (or Council) as appropriate to respond to any specific issues. Accordingly, we intend to be answerable to the City to honor our commitments.

As of this writing, we do not know whether any proposals were submitted to the City, and if so, how many (although we requested that information last week). While we therefore have not reviewed any specific proposals, we are generally familiar with the "solutions" touted by the operators of modular newsracks. In view of the foregoing, we encourage the Committee to reject any and all proposals submitted in response to the RFP. Rather than go down a road that poses more problems than solutions, we encourage you to work with your local publishing community to address our shared concerns in a voluntary and constructive manner.

Again, on behalf of *The Arizona Republic* and its newspaper publishing colleagues, I extend our thanks for your thoughtful consideration of these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David J. Bodney", written over the typed name.

David J. Bodney

DJB/aw

Mark Vinson  
March 27, 2001  
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copy to:

Hon. Neil Giuliano  
Mayor  
City of Tempe  
31 East Fifth Street  
Tempe, Arizona 85281

Donna Lattrell ✓  
Procurement Officer  
20 East Sixth Street  
2<sup>nd</sup> Floor  
Tempe, Arizona 85281

Phyllis A. Ortiz  
Specialty License Coordinator  
Tax and License Office  
City of Tempe  
660 South Mill Avenue  
Suite 105  
Tempe, Arizona 85281

Chris Christian  
Vice President of Circulation  
*The Arizona Republic*  
200 East Van Buren  
Phoenix, Arizona 85004

M. Jean Downs  
General Manager  
*USA Today*  
7307 South Harl Avenue  
Suite 1  
Tempe, Arizona 85283

Mary Farrell  
Circulation Manager  
*The Wall Street Journal*  
7678 East Greenway Road  
Suite 101  
Scottsdale, Arizona 85260



Mark Vinson  
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David Kaye  
*TV Y Mas*  
800 N. 1<sup>st</sup> Avenue  
Phoenix, Arizona 85003

Jeff Mars  
CPA/General Manager  
New Times, Inc.  
1201 East Jefferson  
Phoenix, Arizona 85002

Paul Sanders  
Circulation Director  
*The Business Journal*  
2625 South 19<sup>th</sup> Avenue  
Phoenix, Arizona 85009

Ricardo Torrez  
President-Publisher & CEO  
*La Voz*  
800 North First Avenue  
Phoenix, Arizona 85003

Jerry Zakes  
Vice President of Circulation  
*East Valley Tribune*  
120 West First Avenue  
Mesa, Arizona 85210